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DIS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-205
Table of Allotments,) RM-8862
FM Broadcast Stations.)
(Jupiter and Hobe Sound,)
Florida))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 21, 1997

Released: February 28, 1997

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 11 FCC Rcd 12707 (1996), issued in response to a petition for rule making filed by Jupiter Radio Partners ("Jupiter Radio"), permittee of Station WTPX(FM), Channel 288C3, Jupiter, Florida. The Notice proposed the substitution of Channel 288C2 for Channel 288C3 at Jupiter, Florida, reallocation of Channel 288C2 from Jupiter to Hobe Sound, Florida, and modification of the construction permit for Station WTPX(FM) to specify operation on Channel 288C2 at Hobe Sound. Jupiter Radio filed comments reiterating its interest in Channel 288C2 at Hobe Sound.¹ No other comments were received at the Commission in response to this Notice.

2. In the Notice, we stated that we were unable to determine if the reallocation of Channel 288 from Jupiter, Florida, to Hobe Sound, Florida, would result in a preferential arrangement of allotments. We pointed out that this proposal presented a slightly different approach to the Commission's change of community policy because of the involvement of two urbanized areas. We noted that Jupiter, Florida, is located inside the West Palm Beach Urbanized Area and Hobe Sound, Florida, is located in the Stuart Urbanized Area. A staff analysis indicated that Station WTPX(FM) provides a 70 dBu signal over 10% of the Stuart Urbanized Area and covers 40% of the West Palm Beach Urbanized Area. Further, Station WTPX(FM) operating on Channel 288C2 at Hobe Sound would provide a 70 dBu signal to 100% of the Stuart Urbanized Area but would no longer provide 70dBu coverage to any part of the West Palm Beach Urbanized Area. Since Jupiter Radio intends to relocate its transmitter, the Notice indicated that there

¹ On November 8, 1996, Jupiter Radio filed an application to modify its construction permit pursuant to a "one-step" upgrade from Channel 288C3 to Channel 288C2 at Jupiter, Florida (BPH-961114IA).

would be a gain and loss area.² Jupiter Radio was requested to provide additional information to show that Hobe Sound is sufficiently independent of the Stuart Urbanized Area to merit a first local service preference.

3. Jupiter Radio submitted information to support its claim that Hobe Sound is an independent community deserving of a first local service preference. Jupiter Radio contends that Hobe Sound is an independent community from the Stuart Urbanized Area with local government, police and fire departments and local schools and a central library. According to Jupiter, Hobe Sound has its own Chamber of Commerce, civic organizations and numerous churches. It is also home to the Hobe Sound Nature Center, Martin Memorial Family Care Center, Hobe Sound Golf Club and Heritage Ridge Golf Club of Hobe Sound. Jupiter Radio states that the community is served by the Hobe Sound Bible College and that local residents do work in the community as there are over 150 businesses that associate with the community of Hobe Sound. Jupiter Radio points out that Hobe Sound is not situated contiguous to the central city of Stuart, but instead lies adjacent to several unpopulated areas between the two communities with Port Salerno, Florida, located between Stuart and Hobe Sound. Further, Hobe Sound's population of 11,507 is almost equivalent to that of Stuart (11,936), supporting Jupiter Radio's assertion that Hobe Sound is its own independent community. Jupiter Radio believes that Hobe Sound satisfies a majority of the enumerated eight factors in Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), to warrant treating it as a separate community.

Jupiter Radio points out that in Parker and Port St. Joe, Florida, 11 FCC Rcd 1095 (1996), the Commission has stated that evidence supporting a majority of the eight factors is sufficient to treat the community as independent from the urbanized area. Jupiter Radio states that although it does intend to relocate its transmitter, which will produce a gain and loss area, the loss area is served by at least five aural services and is, therefore, considered to be well served.

4. Jupiter Radio requested action on its petition in accordance with Section 1.420(i) of the Commission's Rules which allows a change in community of license without facing competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). As indicated in the Notice, Hobe Sound is located within the Stuart, Florida Urbanized Area. Since this is a request for a first local service and because of Hobe Sound's inclusion in an urbanized area, we shall use the criteria established in Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988) as a guideline in this proceeding to determine whether to attribute the Stuart

² In its petition for rule making Jupiter Radio stated that the current Station WTPX application proposes to serve 566,835 people and 2,555 square kilometers while the C2 facility, utilizing a directional antenna, would serve 716,296 people and 3,210 square kilometers. Jupiter Radio indicates that if Station WTPX is ordered to Class C2, from the C2 reference location there is a gain area of 138% or 3,535 square kilometers. There is a loss area of 24% or 1,026.9 square kilometers. The loss area is within the West Palm Beach Urbanized Area and receives aural service from more than five stations.

transmission services to Hobe Sound. Under these cases, three criteria are considered--signal population coverage, the size of the suburban community relative to the adjacent city and the interdependence of the suburban community with the central city.³

5. With respect to "signal population coverage," Station WTPX(FM) currently provides a 70 dBu signal to 10% of the Stuart Urbanized area and 40% of the West Palm Beach Urbanized Area. Since Jupiter Radio does intend to move its transmitter, there will be a change in coverage. From its new site, Station WTPX(FM) will provide a 70 dBu signal to 100% of the Stuart Urbanized Area but will no longer provide city grade coverage to the West Palm Beach Urbanized Area. The loss area of Jupiter contains 282,052 people and covers approximately 1,054 square kilometers (407 square miles). The gain area of Hobe Sound contains 246,350 people and covers approximately 2,875 square kilometers (1,110 square miles). The loss area of Jupiter is completely covered by five or more full-time reception services and is, therefore, considered to be a well served area. As for size and proximity, Hobe Sound has a 1990 Census population of 11,507 people. The community of Hobe Sound is located approximately twenty kilometers (12 miles) from Stuart. Stuart has a population of 12,600 according to the 1990 Census.

6. With respect to the third factor, interdependence, we conclude that Hobe Sound is sufficiently independent from Stuart to warrant a first local service. Jupiter Radio has shown that the residents of Hobe Sound perceive themselves to be citizens of a community that is independent from the Stuart Urbanized Area. Hobe Sound is a Census Designated Place with a 1990 Census population of 11,507 people. Martin County, which includes Hobe Sound, is divided into five voting districts and is governed by a Board of County Commissioners. The entire county elects the commissioners. The commissioners must live in the district they represent. The Hobe Sound business district houses the County Tax Collector's offices, Property Appraiser, Clerk of the Circuit Court and the Supervisor of Elections. The Hobe Sound Chamber of Commerce produces a monthly newsletter, The Pelican, which is distributed locally and is inserted in the Stuart News for additional distribution. The Hobe Sound Chamber of Commerce also maintains a community guide which has a telephone listing of local businesses and services. The community receives hospital service at the Martin Memorial Medcenter in Hobe Sound. Hobe Sound has numerous physicians, dentists and optometrists that provide professional services to local residents and the Hobe Sound Veterinary Clinic provides medical care for animals. Hobe Sound has its own schools, central library, police and

³ There are eight factors relevant to interdependence: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. See KFRC supra.

fire departments, trash and waste removal and a rescue squad. Hobe Sound has a variety of civic associations, has seven churches and is in the process of expanding the local library. While the record is unclear as to how many of Hobe Sound's residents work in the community, Jupiter Radio has provided evidence that Hobe Sound has over 150 businesses, restaurants, shops and professional offices which provide employment for many people. Hobe Sound has its own post office and zip code.

7. We conclude that Hobe Sound, located in the Stuart Urbanized Area, should be treated as a separate and distinct community. While some factors appear to favor attributing the Stuart stations to Hobe Sound, the third factor, interdependence of the suburban community to the urbanized area, favors a finding of not attributing the Stuart stations to Hobe Sound. As stated in Tuck, the size and proximity of the specified community to the central city and signal population coverage are pertinent, but less significant than evidence of independence. As a result, we will not attribute the Stuart stations to Hobe Sound.

8. Having made that decision, we must determine whether Jupiter Radio's proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangement of allotments using the allotment priorities set forth in Revision of FM Assignment Policies and Procedures.⁴ Our decision is based on Priority No. (3), first local service. Under this priority, the proposed arrangement of allotments would result in the addition of a first local service at Hobe Sound. By way of contrast, retaining the existing arrangement of allotments would result in Jupiter having two FM stations and one AM station. We believe that the public interest is better served by providing a first local service to Hobe Sound rather than having three broadcast services in Jupiter. Jupiter will be served by FM Station WJBW and AM Station WMLZ while Station WTPX(FM) will provide 60 dBu coverage to Jupiter. Based on the information before us, we find that the public interest would be served by substituting Channel 288C2 for Channel 288C3 at Jupiter and reallocating Channel 288C2 to Hobe Sound.

9. Channel 288C2 can be allotted to Hobe Sound, Florida, in compliance with the Commission's minimum distance separation requirements at Jupiter Radio's specified site.⁵ Although Channel 288C2 is currently short spaced to Channel 288A, Station WYMR, Sebring, Florida, the license for Station WYMR was modified to specify operation on Channel 289C3 in MM Docket No. 93-65. See 11 FCC Rcd 4684 (1996). Therefore, grant of a final license for Station WTPX at Hobe Sound may be withheld until Station WYMR is licensed on Channel 289C3. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the construction permit for Station WTPX(FM), Channel 288C3, to specify Hobe Sound, Florida, as its community of license on Channel 288C2 in lieu of its use at Jupiter,

⁴ (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight would be given to priorities (2) and (3)].

⁵ The coordinates for Channel 288C2 at Hobe Sound are 27-16-03 and 80-12-10.

Florida.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 14, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Hobe Sound, Florida	288C2
Jupiter, Florida	258A

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Jupiter Radio Partners for Station WTPX(FM) IS MODIFIED to specify operation on Channel 288C2 at Hobe Sound, Florida, in lieu of Channel 288C3 at Jupiter, Florida, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Station WYMR
Outback Broadcasters, Inc.
220 East Main Street
Avon, Florida 33825

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when

filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Jupiter Radio Partners, permittee of Station WTPX(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license from Jupiter, Florida, to Hobe Sound, Florida, and upgrade Channel 288C3 to Channel 288C2.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 288C2 at Hobe Sound, Florida, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau